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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,204	04/13/2004	Andy Kenowski	470037.90718	4051

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EXAMINER	
STINSON, FRANKIE L	

ART UNIT	PAPER NUMBER
1746	

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/823,204	KENOWSKI ET AL.	
	Examiner	Art Unit	
	FRANKIE L. STINSON	1746	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 December 0204*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-6* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1 and 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over van den Berg et al. (U. S. Pat. No. 5,651,329) in view of Kuta et al. (U. S. Pat. No. 5,425,385), Buck (U. S. Pat. No. 6,089,242), Labib et al. (U. S. Pat. App. Pub. No. 2004/0007255) or van den Berg et al. (U. S. Pat. No. 6,323,033).

Re claim 1, van den Berg'329 is cited disclosing a clean-in-place system for cleaning an apparatus (see fig. 2 for example), the system comprising:

a tank (16) containing a fluid composition having a measurable physical property a first measured value, the tank having a supply valve/cock (35) and a return valve/cock (4, 6, 42);

a fluid supply conduit (34) in fluid communication with the supply valve of the tank and an inlet of the apparatus;

a fluid return conduit (unnumbered) in fluid communication with the return valve of the tank and an outlet of the apparatus;

a sensor (25) in the fluid return conduit for repeatedly sensing the measurable physical property of fluids passing through the fluid return conduit and for generating a physical property signal corresponding to each sensed measurable physical property; and

a controller responsive (14) to physical property signals from various sensors and providing control signals to various valves, the controller for executing a program stored on the controller that differs from the claim only in the functional language of the controller opening the supply valve/cock and the return valve/cock to circulate the fluid composition through the tank and the apparatus,

comparing successive physical property signals from the sensor, and close the return valve/cock at a time after successive physical property signals have a deviation greater than a predetermined amount. The patents to Kuta, Buck, Labib and van den Berg'033 are each cited in a clean-in-place system, the arrangement of providing a controller ("PLC" in Kuta, 10 in Buck, 600 in Labib and 14 in van den Berg'033) where the controller receives physical property signals from sensors and controls valving in response there to (see Kuta col. 7, lines 54-68, col. 14, lines 1-59; see Buck's Abstract and col. 2, line 34 thru col. 3, line 47; see Labib, paragraph 107 and see van den Berg'033, col. 3, line 63 thru col. 4, line 36). It therefore would have been obvious to one having ordinary skill in the art to modify (or program) the controller in van den Berg'329, to open and/close the valves as a function of the cleaning composition's physical property(ies) for the purpose of ensuring that the cleaning process is complete and meets industry standards. It is old and well known in various arts to control, in an associated process, various elements of the system, i.e. valving, pumps, motors as a function of system parameters. The control in van den Berg 329, is clearly capable of performing the recited function. (APPARATUS CLAIMS MUST BE STRUCTURALLY DISTINGUISHABLE FROM THE PRIOR ART >While features of an apparatus may be recited

either structurally or functionally, claims< directed to >an< apparatus must be distinguished from the prior art in terms of structure rather than function. >In re Schreiber, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997) (The absence of a disclosure in a prior art reference relating to function did not defeat the Board's finding of anticipation of claimed apparatus because the limitations at issue were found to be inherent in the prior art reference); see also In re Swinehart, 439 F.2d 210, 212-13, 169 USPQ 226, 228-29 (CCPA 1971);< In re Danly, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). "[A]pparatus claims cover what a device is, not what a device does." Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original)). Re claims 3 and 4, Kuta (col. 2, lines 3-19 and Abstract), Buck (col. 8, lines 45-56) and Labib (see last 7 lines of paragraph 103) each disclose the measurable physical parameter being pH or conductivity. Also note that Kuta discloses a plurality of solutions with one being an alkaline solution (col. 4, line 25) and an acidic rinse (col. 4, line 42) and van den Berg'033 discloses the same (see col. 6, lines 1-9). Clearly various fluids may be used in the cleaning process dependent upon the type of cleaning desired and the associated parameters. This is also applicable to the subject matter of claim 5. Re claim 6, as proposedly modified, van den Berg'329's controller/sensor is clearly capable of functioning in manner as instantly claimed.

3. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over the applied prior art as applied to claim 1 above, and further in view of either Redin or Duckett et al.

Claim 2 defines over the applied prior art only in the recitation of the second tank and the second composition. Redin and Duckett are each cited disclosing a clean-in-place system comprising first and second tanks having first and second fluid compositions. It therefore would have been obvious to one having ordinary skill in the art to modify/provide van den Berg'329 with a second tank and composition as taught by either Duckett or Redin, for the purpose of removing any residual cleaning composition. It is old in well known to provide a first cleaning liquid for a washing process and subsequently providing a rinse composition for the removal of the washing composition.

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. In Kaiser, Welch, Riess, Semp et al., Weber et al., van der Lely et al., van den Berg, Galanor, Schmid, Bender, Swanson et al., Seeley, Zimmerly, Zall et al., Nordegren, Bihler, Souza et al., Shindo et al., and Berger et al., note the clean-in-place systems and/or control means.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to FRANKIE L. STINSON whose telephone number is (572) 272-1308. The examiner can normally be reached on M-F from 5:30 am to 2:00 pm and some Saturdays from approximately 5:30 am to 11:30 am.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr, can be reached on (571) 272-1700. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

fls

FRANKIE L. STINSON
Primary Examiner
GROUP ART UNIT 1746